

Simpson Thacher Successfully Overturns Jury Verdict in Product Liability Case

06.13.22



The New York Court of Appeals has overturned a \$16.5 million jury verdict against Whittaker Clark & Daniels Inc. After a Manhattan jury determined that the talcum powder supplied by Whittaker Clark was contaminated and caused a woman's fatal cancer, Simpson Thacher was retained to prosecute the appeal. In an opinion described by one commentator as a "seminal decision which will likely change the face" of low dose tort litigation in New York, the Court held plaintiff's proof of causation insufficient as a matter of law, reversed with costs and dismissed the case. To establish liability, the Court required a plaintiff to establish, using expert testimony based on generally accepted methodologies, sufficient exposure to a toxin to cause the claimed illness. Rejecting plaintiff's argument that the Court of Appeals' standard is impossible to meet, the Court stated that "[t]he fault here is not in our standard, but in plaintiff's proof."

The Court reaffirmed its decision in *Parker v. Mobil Oil Corp.*, 7 N.Y.3d 434 (2006) that "an [expert] opinion on causation should set forth a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation) and that plaintiff was exposed to sufficient levels of the toxin to cause the illness (specific causation)."

This case is *Nemeth v. Brenntag North America, Inc.*, 2022 NY Slip Op 02769 (April 26, 2022), and has received media coverage in several publications, including [Reuters](#), [New York Law Journal](#) and [Law360](#).

The Simpson Thacher team included Bryce Friedman and Stephanie Hon.

Team and Contacts

[Bryce Friedman](#)

Partner

bfriedman@stblaw.com

+1-212-455-2235



